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(Original Signature of Member)

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R.** \_\_\_\_\_

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**IN THE HOUSE OF REPRESENTATIVES**

Mr. MARKEY introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To withdraw certain benefits of the Private Securities Litiga-  
tion Reform Act from auditors that perform non-audit  
functions, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Accountability for Ac-  
5       countants Act of 2002”.



1 **SEC. 2. RESTORATION OF JOINT AND SEVERAL LIABILITY.**

2 (a) AMENDMENT.—Subparagraph (A) of section  
3 21D(f)(2) of the Securities Exchange Act of 1934 (15  
4 U.S.C. 78u-4(f)(2)(A)) is amended to read as follows:

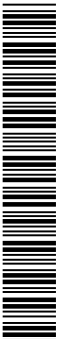
5 “(A) JOINT AND SEVERAL LIABILITY.—

6 Any covered person against whom a final judg-  
7 ment is entered in a private action shall be lia-  
8 ble for damages jointly and severally only if the  
9 trier of fact specifically determines that—

10 “(i) such covered person knowingly  
11 committed a violation of the securities  
12 laws;

13 “(ii) the covered person was the audi-  
14 tor of the financial statements of the issuer  
15 of the securities that are the subject of the  
16 class action and such auditor failed to  
17 comply with section 10A by failing to de-  
18 tect and report an illegal act of such issuer  
19 that is the basis of such class action;

20 “(iii) the covered person was the audi-  
21 tor of the financial statements of such  
22 issuer and such auditor performed any  
23 non-audit functions for such issuer during  
24 the fiscal year in which an alleged violation  
25 of the securities laws occurred; or



1 “(iv) the issuer of such securities is  
2 insolvent.”.

3 (b) UNCOLLECTABLE SHARES.—Section 21D(f)(4) of  
4 such Act is amended by adding at the end the following  
5 new subparagraph:

6 “(D) INAPPLICABILITY TO INSOLVENCY  
7 CASES.—The provisions of this paragraph shall  
8 not apply in any case in which the trier of fact  
9 determines that the issuer of the securities that  
10 are the subject of the class action is insolvent  
11 under paragraph (2)(A)(iv).”.

12 (c) DISCLOSURE TO JURIES.—Section 21D(f) of such  
13 Act is further amended—

14 (1) by striking paragraph (6); and

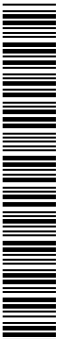
15 (2) by redesignating paragraphs (7) through  
16 (10) as paragraphs (6) through (9), respectively.

17 (d) DEFINITION.—Section 21D(f)(9) of such Act (as  
18 redesignated by subsection (c)(2) of this section) is  
19 amended—

20 (A) by striking “and” at the end of sub-  
21 paragraph (C);

22 (B) by striking the period at the end of  
23 subparagraph (D) and inserting “; and”; and

24 (C) by adding at the end the following new  
25 subparagraph:



1 “(E) an auditor shall be considered to have  
2 performed ‘non-audit functions for an issuer’ if  
3 such auditor received any compensation for  
4 services from such issuer for a fiscal year that  
5 did not qualify to be treated as audit fees for  
6 such fiscal year for purposes of item 9(e)(1) of  
7 the schedule 14A of such issuer.”.

8 (e) PREVENTION OF STAYS OF DISCOVERY.—

9 (1) Section 21D(b)(3) of such Act is amended  
10 by adding at the end the following new subpara-  
11 graph:

12 “(E) INAPPLICABILITY TO ACTION  
13 AGAINST AUDITORS.—In any private action  
14 arising under this title against the auditor of  
15 the financial statements of the issuer of the se-  
16 curities that are the subject of such action, dis-  
17 covery and other proceedings shall not be  
18 stayed pursuant to this paragraph.”.

19 (2) Section 27(b) of the Securities Act of 1933  
20 (15 U.S.C. 77z-1(b)) is amended by adding at the  
21 end the following new paragraph:

22 “(5) INAPPLICABILITY TO ACTION AGAINST  
23 AUDITORS.—In any private action arising under this  
24 title against the auditor of the financial statements  
25 of the issuer of the securities that are the subject of



1 such action, discovery and other proceedings shall  
2 not be stayed pursuant to this subsection.”.

3 **SEC. 3. RESTORATION OF AIDING AND ABETTING LIABIL-**  
4 **ITY.**

5 (a) SECURITIES ACT OF 1933.—Section 20 of the Se-  
6 curities Act of 1933 (15 U.S.C. 77t) is amended by adding  
7 at the end the following new subsection:

8 “(g) PROSECUTION OF PERSONS WHO AID OR ABET  
9 VIOLATIONS.—For purposes of subsections (b) and (d),  
10 any person who knowingly or recklessly provides substan-  
11 tial assistance to another person in the violation of a provi-  
12 sion of this title, or of any rule or regulation hereunder,  
13 shall be deemed to violate such provision to the same ex-  
14 tent as the person to whom such assistance is provided.  
15 No person shall be liable under this subsection based on  
16 an omission or failure to act unless such omission or fail-  
17 ure constituted a breach of a duty owed by such person.”.

18 (b) SECURITIES EXCHANGE ACT OF 1934.—Section  
19 20(e) of the Securities Exchange Act of 1934 (15 U.S.C.  
20 78t(e)) is amended to read as follows:

21 “(e) PROSECUTION OF PERSONS WHO AID OR ABET  
22 VIOLATIONS.—For purposes of subsections (d)(1) and  
23 (d)(3) of section 21, or an action by a self-regulatory orga-  
24 nization, or an express or implied private right of action  
25 under this title, any person who knowingly or recklessly



1 provides substantial assistance to another person in the  
2 violation of a provision of this title, or of any rule or regu-  
3 lation thereunder, shall be deemed to violate such provi-  
4 sion and shall be liable to the same extent as the person  
5 to whom such assistance is provided. No person shall be  
6 liable under this subsection based on an omission or fail-  
7 ure to act unless such omission or failure constituted a  
8 breach of a duty owed by such person.”.

9 (c) INVESTMENT COMPANY ACT OF 1940.—Section  
10 42 of the Investment Company Act of 1940 (15 U.S.C.  
11 80a–41) is amended by adding at the end the following  
12 new subsection:

13 “(f) PROSECUTION OF PERSONS WHO AID OR ABET  
14 VIOLATIONS.—For purposes of subsections (d) and (e),  
15 any person who knowingly or recklessly provides substan-  
16 tial assistance to another person in the violation of a provi-  
17 sion of this title, or of any rule, regulation, or order here-  
18 under, shall be deemed to violate such provision to the  
19 same extent as the person to whom such assistance is pro-  
20 vided. No person shall be liable under this subsection  
21 based on an omission or failure to act unless such omission  
22 or failure constituted a breach of a duty owed by such  
23 person.”.



1 (d) INVESTMENT ADVISERS ACT OF 1940.—Section  
2 209(d) of the Investment Advisers Act of 1940 (15 U.S.C.  
3 80b–9) is amended—

4 (1) in subsection (d)—

5 (A) by striking “or that any person has  
6 aided, abetted, counseled, commanded, induced,  
7 or procured, is aiding, abetting, counseling,  
8 commanding, inducing, or procuring, or is  
9 about to aid, abet, counsel, command, induce,  
10 or procure such a violation,”; and

11 (B) by striking “or in aiding, abetting,  
12 counseling, commanding, inducing, or procuring  
13 any such act or practice”; and

14 (2) by adding at the end the following new sub-  
15 section:

16 “(f) PROSECUTION OF PERSONS WHO AID OR ABET  
17 VIOLATIONS.—For purposes of subsections (d) and (e),  
18 any person who knowingly or recklessly provides substan-  
19 tial assistance to another person in the violation of a provi-  
20 sion of this title, or of any rule, regulation, or order here-  
21 under, shall be deemed to violate such provision to the  
22 same extent as the person to whom such assistance is pro-  
23 vided. No person shall be liable under this subsection  
24 based on an omission or failure to act unless such omission



1 or failure constituted a breach of duty owed by such per-  
2 son.”.

3 **SEC. 4. DESTRUCTION OF RECORDS; SEPARATION OF**  
4 **FUNCTIONS.**

5 (a) AUDIT REQUIREMENTS.—Section 10A of the Se-  
6 curities Exchange Act of 1934 (15 U.S.C. 78j–1) is  
7 amended—

8 (1) by redesignating subsections (e) and (f) as  
9 subsections (g) and (h), respectively; and

10 (2) by inserting after subsection (d) the fol-  
11 lowing new subsections:

12 “(e) DESTRUCTION OF RECORDS.—

13 “(1) MAINTENANCE OF RECORDS REQUIRED.—

14 Any accountant that conducts an audit of an issuer  
15 pursuant to this title to which subsection (a) applies  
16 shall maintain all documents (including electronic  
17 documents) sent, received, or created in connection  
18 with any audit, review, or other engagement for such  
19 issuer for a period of four years from the end of the  
20 fiscal period in which the engagement was con-  
21 cluded.

22 “(2) PENALTY.—In addition to any other sanc-  
23 tions that may be available, any person who know-  
24 ingly and willfully violates paragraph (1) shall be  
25 subject to fine and imprisonment to the same extent





1 as a person violating section 1512(b) of title 18,  
2 United States Code.

3 “(f) CONSIDERATION OF SEPARATION OF AUDIT AND  
4 NON-AUDIT FUNCTIONS.—

5 “(1) CONSIDERATION REQUIRED.—Any ac-  
6 countant that conducts an audit of an issuer pursu-  
7 ant to this title to which subsection (a) applies shall,  
8 within 60 days after the date of enactment of the  
9 Accountability for Accountants Act of 2002, initiate  
10 a review of—

11 “(A) whether that accountant should divest  
12 itself of any interests in non-audit businesses in  
13 light of the inherent potential conflicts of inter-  
14 est in providing both audit and non-audit serv-  
15 ices to an issuer; or

16 “(B) whether the accountant should cease  
17 providing non-audit services to those companies  
18 whose financial statements it audits.

19 “(2) REPORTS.—Each accountant to which  
20 paragraph (1) applies shall report to the Commis-  
21 sion within 12 months after such date of enactment  
22 on whether such accountant has decided to either di-  
23 vest its non-audit services, or to cease providing non-  
24 audit services to audit clients. The Commission shall



1 submit a report to Congress on the reports received  
2 under the preceding sentence.”.

3 (b) PRESERVATION OF RECORDS DURING SHARE-  
4 HOLDER LITIGATION.—

5 (1) SECURITIES ACT OF 1933.—Section  
6 27(b)(2) of the Securities Act of 1933 (15 U.S.C.  
7 77z–1(b)(2)) is amended by inserting “, and the  
8 issuer of the securities that are the subject of such  
9 action,” after “in the complaint”.

10 (2) SECURITIES EXCHANGE ACT OF 1934.—  
11 Section 21D(b)(3)(C)(i) of the Securities Act of  
12 1933 (15 U.S.C. 77z–1(b)(3)(C)(i)) is amended by  
13 inserting “, and the issuer of the securities that are  
14 the subject of such action,” after “in the com-  
15 plaint”.

